



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: JULY 13, 2023

IN THE MATTER OF:

Appeal Board No. 629146

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective January 21, 2023, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by POWER-FLO TECHNOLOGIES INC prior to January 21, 2023 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed May 3, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a business development manager by the employer manufacturer and wholesaler of electrical distribution equipment, for about five years. The claimant was paid about \$130,000 per year, including base salary and bonuses for this full-time position.

Prior to January 19, 2023, the claimant had discussions with his manager (DG) regarding the fact that he believed he should receive a greater compensation package based upon the amount of money he made for the employer. Following these conversations, the employer's president/CEO came up with a program for

compensating the claimant, which was presented to the claimant in a number of emails prior to January 18, 2023. The claimant was disappointed with the plan as proposed, as it was drastically lower than what the claimant had expected, and he expressed this to DG. DG advised the claimant in an email on January 18, 2023, that the president was available by phone to discuss the matter with the claimant.

On this suggestion, the claimant called the president on the morning of January 19, 2023. In a conversation that lasted about 4 minutes, the claimant expressed his feelings about the compensation plan, which the president concluded demonstrated the claimant's "misunderstanding" of the new bonus plan. The president told the claimant that he had created the plan, so he understood what it meant, that he knew how to structure compensation plans and that the claimant did not. In addition, the president told the claimant that he was being selfish and myopic in his request for additional compensation, and did not understand the industry. Both the claimant and the president raised their voices in during this discussion. After hearing what he thought was insulting comments from the president, the claimant decided that the conversation was not productive, and needed to be deescalated. In an attempt to do so, the claimant hung up the phone, intending to call back when everyone was calmer.

About 10 minutes later, the clamant placed a call to DG, and confirmed that the president was in the room with DG. In a call that lasted 1 minute, the claimant apologized for losing his temper, stated that the employer knew what he wanted in the way of increased compensation, that he knew that the employer was "going to do what they were going to do," hoped they could move forward, and ended the call.

After these calls, the president made the decision to terminate the claimant's employment, and instructed the employer's Human Resources director to fire the claimant the next day. The claimant was discharged by letter dated January 20, 2023, and signed by the employer's HR director.

Prior to January 19, 2023, the claimant had never been warned by the employer about any unsatisfactory behavior, nor was the president was aware of any such behavior by the claimant. In all of the president's previous interactions with the claimant, the claimant had been professional and courteous.

OPINION: The evidence establishes that the claimant was discharged on

January 20, 2023 after the employer's president concluded that his behavior in connection with a telephone call on January 19, 2023 was disrespectful and insubordinate. However, while the record establishes that the claimant and the company president had a brief, heated exchange about the claimant's request for additional compensation, the record fails to establish the claimant January 19 conduct constitutes misconduct for unemployment insurance purposes.

Initially, we note that we are more persuaded by the claimant's account of the January 19, 2023 telephone calls than by the president's, since DG, who was present during the calls, provided testimony that was consistent with the claimant's version of events. Specifically, DG testified that things got a little heated during the call, and that there was a slight raising of voices, but there was "no yelling that I can recall." Both the claimant and DG testified that the claimant called DG shortly after the call with the president ended, that the president was in the room with DG during that call, and that the claimant's words were not the "threat" testified to by the president. Indeed, the language recounted by DG and the claimant simply expressed that the employer knew the claimant was not happy with the compensation plan proposed. DG testified that he had no reaction to, and reached no conclusion about, the purpose of the claimant's words, contradicting the president's testimony that DG came into his office after the call, upset by the threat made by the claimant. The president's testimony that he learned of this subsequent call from the claimant when DG came and told him about it, provides a further reason to give less weight to the president's recounting of the events.

The claimant's testimony, supported by DG's testimony as well as telephone records produced by the

claimant, establishes a short telephone call with the company president, during which they both became

agitated and raised their voices. The claimant credibly and consistently testified that since the call was not productive, and in an attempt to avoid further discord and insulting comments, he ended the call. The claimant also credibly testified that he called back 10 minutes later and spoke to DG, in the president's presence, apologized, and expressed an interest in moving forward. This consistent and credible testimony does not reflect a disregard for common decency, and insubordination, as contended by the employer.

While an employer may discharge an employee for any lawful reason, including the employer's displeasure with the manner in which the employee handled a disagreement about compensation, not all such reasons constitute misconduct for unemployment insurance purposes. Here, we note there is no direct evidence of prior similar conduct by the claimant, or of prior warnings to the claimant about similar incidents during the course of his employment, so the claimant could not have known his job was in jeopardy. Further, we find it significant that the president himself testified that in all of his previous interactions with the claimant, the claimant had been professional and courteous. Accordingly, we find that this single instance in which the claimant raised his voice during a call in which he believed his professional worth and industry experience was being disparaged, and the claimant's conduct of hanging up to de-escalate the situation, does not constitute misconduct under the Labor Law. We therefore conclude that the claimant was separated from employment under nondisqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective January 21, 2023, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to January 21, 2023 cannot be used toward the establishment of a claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER